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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91186154
Party	Plaintiff Top Gun Intellectual Properties, LLC
Correspondence Address	Michael F Sarney KATTEN MUCHIN ROSENMAN LLP 575 Madison Avenue New York, NY 10022 UNITED STATES michael.sarney@kattenlaw.com
Submission	Motion for Sanctions
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Date	10/13/2009
Attachments	Top Gun Sanctions Motion.pdf (4 pages)(145147 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

TOP GUN INTELLECTUAL PROPERTIES, LLC,)	
)	
)	
Opposer,)	Opposition No. 91186154
)	
v.)	
)	
UNITED IP, LLC,)	
)	
Applicant.)	
)	

**OPPOSER'S MOTION FOR DISCOVERY SANCTIONS
FOR FAILURE TO COMPLY WITH BOARD
DISCOVERY ORDER**

Pursuant to 37 C.F.R. §2.120(g) and Rule 37 of the Federal Rules of Civil Procedure, Opposer Top Gun Intellectual Properties hereby moves for an Order for discovery sanctions for the failure of Applicant United IP, LLC to comply with the Board Discovery Order mailed August 4, 2009. Specifically, Opposer seeks sanctions in the form of judgment against Applicant by default.

As this Motion embodies a brief pursuant to 37 C.F.R. §2.127(a), no separate brief is attached.

On August 4, 2009, the Board granted Opposer's Motion to Compel Discovery, which was filed on June 10, 2009. Opposer's motion was granted as conceded, as Applicant failed to file any response to the motion to compel. In granting the motion to compel, the Board ordered that Applicant serve responses to Opposer's interrogatories and requests for production, without objections, within 30 days of the mailing of the Order. The time for Opposer to comply with the Order expired on September 3, 2009. The discovery period closes October 21, 2009.

As of the filing of this motion, Opposer has still not received any responses to the outstanding discovery requests. Opposer has therefore failed to comply with the Board's Order, and sanctions under 37 C.F.R. §2.120(g) and Rule 37 of the Federal Rules of Civil Procedure are warranted. For the reasons set forth below, Opposer respectfully submits that the sanction awarded should be judgment in Opposer's favor.

Opposer alleged in its Notice of Opposition that it will be harmed by registration of Applicant's mark. Opposer is entitled to discovery in connection with its claim and its discovery requests were proper under Rule 26 of the Federal Rules of Civil Procedure, in that they related to the subject matter of Opposer's claim. Applicant should not be permitted to register its mark if it will not provide discovery relating to its intended use of a mark which Applicant contends is confusingly similar to its own registered marks, as alleged in the Notice of Opposition. Likewise, Opposer should not be required to continue incur the expense of prosecuting its claim against an Applicant which has failed to make any effort to defend its application and participate in this proceeding. As set forth in Opposer's motion to compel, Applicant not only failed to respond to the outstanding discovery requests, but also failed to respond to Opposer's counsel when several attempts were made to resolve the discovery dispute prior to filing the motion to compel. Thus, Opposer should not be required to incur any further expenses by taking and submitting testimony when Applicant has demonstrated a complete indifference to this proceeding.

Accordingly, Opposer respectfully requests that the Board enter an Order for sanctions granting judgment against Applicant, and in favor of Opposer, by default. In the alternative, if the Board decides not to award judgment in favor of Opposer, then Opposer requests other sanctions as authorized under 37 C.F.R. §2.120(g) and Rule 37 of the Federal Rules of Civil

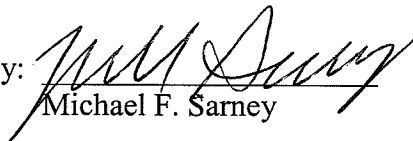
Procedure, such as striking all of Applicant's pleadings and defenses and prohibiting Applicant from introducing into evidence any matter relating to the subjects set forth in Opposer's interrogatories and requests for production.

However, it is respectfully submitted that, to the extent that the Board orders any of these alternative sanctions, Applicant would then be in a position in which it would be unable to defend its application against Opposer's claims, and summary judgment in favor of Opposer would then be warranted. Accordingly, it is respectfully submitted that entry of judgment at this time would be the most appropriate sanction, as it would protect Opposer from having to unnecessarily incur the expense and inconvenience of filing a motion for summary judgment after the close of discovery on a claim which Applicant has elected not to defend subsequent to filing its Answer to the Notice of Opposition. In this regard, it is noted that Applicant has also failed to serve any discovery on Opposer, thereby further demonstrating its indifference to this proceeding. Likewise, judgment at this time would enable the Board to avoid expending its time and resources in deciding the inevitable motion for summary judgment which Opposer will necessarily file should the sanction of judgment in its favor not be awarded at this time.

Accordingly, for the foregoing reasons, Opposer's motion for sanctions should be granted, and Opposer respectfully requests that the Board enter judgment in its favor.

Dated: October 13, 2009

KATTEN MUCHIN ROSENMAN LLP

By: 
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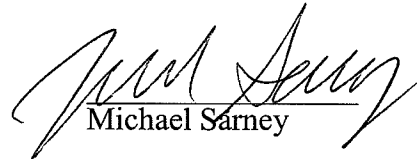
CERTIFICATE OF SERVICE

I, the undersigned, Michael Sarney, hereby certify that, on the 13th day of October, 2009, I caused to be served a true and correct copy of

OPPOSER'S MOTION FOR DISCOVERY SANCTIONS FOR FAILURE TO COMPLY WITH BOARD DISCOVERY ORDER

by U.S. Mail, first class, by depositing the same in a depository of the United States Postal Service, on the Applicant, as follows:

J Carl Henderson
Director of Legal Affairs
United IP, LLC
3403 E John Carpenter Freeway
Irving, Texas 75062


Michael Sarney